

**House File 2111 - Introduced**

HOUSE FILE 2111

BY HEARTSILL

**A BILL FOR**

1 An Act relating to controversies involving fence viewers.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 359.17, subsection 1, Code 2018, is  
2 amended to read as follows:

3 1. The board of township trustees in each township shall  
4 consist of three registered voters of the township. However,  
5 in townships with a taxable valuation for property tax purposes  
6 of two hundred fifty million dollars or more, the board of  
7 township trustees shall consist of five registered voters  
8 of the township. The trustees shall act as fence viewers  
9 as provided in chapter 359A and shall perform other duties  
10 assigned them by law. The board of trustees shall meet not  
11 less than two times a year. At least one of the meetings shall  
12 be scheduled to meet the requirements of [section 359.49](#).

13 Sec. 2. NEW SECTION. **359A.2A Fence viewers — township**  
14 **trustees — authority — conflict of interest.**

15 1. The trustees of the township where a controversy arises  
16 under this chapter shall serve as fence viewers. The fence  
17 viewers shall have authority to hear and decide all questions  
18 related to the controversy as provided in this chapter.

19 2. *a.* A fence viewer who may have a conflict of interest in  
20 deciding a question related to the controversy must disclose  
21 the possible conflict of interest to the parties and the other  
22 fence viewers prior to the fence viewers participating in the  
23 matter by conducting a hearing or making a decision under  
24 section 359A.4.

25 *b.* A fence viewer who has a conflict of interest in deciding  
26 a question related to the controversy is disqualified from  
27 participating in the matter. The disqualification shall be  
28 made by the election of the fence viewer or unanimous vote  
29 of the fence viewers who do not have a conflict of interest  
30 in the controversy. However, if three or more fence viewers  
31 do not have a conflict of interest in the controversy, the  
32 disqualification shall be made by a majority vote of those  
33 fence viewers. A declaration of the conflict of interest shall  
34 be sent to the board of supervisors of each county where the  
35 party's adjoining property boundary subject of the controversy

1 is located.

2     3. A conflict of interest exists when a fence viewer is  
3 asked to make a determination that would directly affect the  
4 personal or financial interests of the fence viewer or an  
5 immediate family member of the fence viewer. The immediate  
6 family member shall be limited to any of the following:

7     a. A spouse.

8     b. A child, stepchild, grandchild, parent, stepparent,  
9 grandparent, sibling, stepsibling, half sibling, aunt, uncle,  
10 niece, or nephew.

11     c. The spouse of any individual described in paragraph "b".

12     4. Upon the disqualification of a fence viewer, the board of  
13 supervisors shall appoint a qualified substitute fence viewer  
14 only for purposes of deciding the controversy. However, this  
15 subsection does not apply if the township clerk selects a fence  
16 viewer as provided in section 359A.14.

17     5. The board of supervisors may adopt an ordinance providing  
18 for any of the following:

19     a. Other circumstances in which a trustee may have a  
20 conflict of interest.

21     b. Procedures for providing notice of a conflict of  
22 interest, the disqualification of a fence viewer who has  
23 a conflict of interest, or the appointment of a qualified  
24 substitute fence viewer due to the conflict of interest.

25     6. Notwithstanding other provisions in the section to  
26 the contrary, a fence viewer who may or does have a conflict  
27 of interest in a controversy may participate in the matter,  
28 including by hearing and deciding all questions related to the  
29 controversy, if each party to the controversy signs a waiver.  
30 The waiver shall state that the party has been notified of the  
31 fence viewer's conflict of interest and agrees to the fence  
32 viewer's participation in the matter. The waiver shall be  
33 attached to the order issued pursuant to section 359A.4.

34     Sec. 3. Section 359A.3, Code 2018, is amended to read as  
35 follows:

1     **359A.3 Powers of fence viewers Notice and hearing.**

2     The fence viewers shall ~~have power to determine any~~  
3 ~~controversy arising under this chapter~~, upon giving give five  
4 days' notice in writing to the ~~opposite party or all parties,~~  
5 prescribing to the controversy. The notice shall prescribe  
6 the time and place of ~~meeting to hear and determine the~~  
7 ~~matter named~~ the hearing to decide any and all matters that  
8 are part of the controversy as described in said the notice.  
9 Upon request of any landowner, the fence viewers shall give  
10 ~~such the~~ notice to all adjoining landowners liable for the  
11 erection, maintenance, rebuilding, trimming, or cutting back,  
12 or repairing of a partition fence, or to pay for an existing  
13 hedge or fence. The notice must include the names of the fence  
14 viewers and state whether a fence viewer disclosed a possible  
15 conflict of interest or whether a substitute fence viewer was  
16 appointed due to a fence viewer's disqualification pursuant to  
17 section 359A.2A.

18     Sec. 4. Section 359A.4, Code 2018, is amended to read as  
19 follows:

20     **359A.4 Decision Hearing — decision — order — deposit.**

21     1. At said the time and place described in section 359A.3,  
22 the fence viewers shall meet to hear and ~~determine by~~ decide  
23 the controversy. The fence viewers shall issue a written order  
24 that specifies the obligations, rights, and duties of the  
25 respective parties in such matter, and.

26     2. a. If the fence viewers determine the erection of a  
27 fence may be unfeasible in any location which constitutes the  
28 adjoining parties' property boundary, the fence viewers shall  
29 conduct a site evaluation. The fence viewers may request  
30 assistance by the county engineer in the county where the  
31 adjoining properties' boundary is situated. The determination  
32 may be based on any of the following:

- 33     (1) Topography.  
34     (2) Terrain.  
35     (3) Terraces.

1     (4) Land slope.

2     (5) Unstable ground.

3     (6) The presence of surface water, drainage systems,  
4 sinkholes, or water wells.

5     (7) Easements.

6     (8) Utilities.

7     (9) Available area.

8     b. If the fence viewers determine the erection of a fence  
9 is unfeasible as provided in the site evaluation, the fence  
10 viewers shall assist the parties in reaching an agreement as  
11 provided in sections 359A.12 and 359A.13. However, if the  
12 parties cannot reach such agreement within sixty days after the  
13 site evaluation is completed, the fence viewers shall order  
14 the fence's erection. The fence shall be erected as otherwise  
15 provided in this section, except for any location identified  
16 as unfeasible in the site evaluation. For that location, the  
17 fence viewers shall order the fence to be erected at the most  
18 feasible location on the property of an adjoining owner that is  
19 closest to that adjoining owner's property boundary.

20     3. a. The order shall assign to each owner the part which  
21 the owner shall erect, maintain, rebuild, trim or cut back,  
22 or pay for, and fix the value thereof, and prescribe the time  
23 within which the same shall be completed or paid for, and, in  
24 case of repair, may specify the kind of repairs to be made.

25     b. If the fence is not erected, rebuilt, or repaired within  
26 the time prescribed in the order, the fence viewers shall  
27 require the complaining landowner to deposit with the fence  
28 viewers ~~a sum~~ an amount of money sufficient to pay for the  
29 erecting, rebuilding, trimming, cutting back or repairing such  
30 fence together with the fees of the fence viewers and costs.  
31 Such complaining landowner shall be reimbursed as soon as  
32 the costs and fees assessed against the party in default are  
33 collected as provided in [section 359A.6](#).

34     4. The order shall include the names of the fence viewers.  
35 The order shall state whether a fence viewer disclosed a

1 possible conflict of interest, and whether a substitute fence  
2 viewer was appointed due to a disqualification pursuant to  
3 section 359A.2A. Any waiver of a conflict of interest signed  
4 by a party shall be attached to the order.

5 EXPLANATION

6 The inclusion of this explanation does not constitute agreement with  
7 the explanation's substance by the members of the general assembly.

8 GENERAL. This bill amends provisions in Iowa's fence law  
9 (Code chapter 359A) that in part governs the construction  
10 (erection) or maintenance of fences existing on the property  
11 boundary between land of adjoining owners (sometimes referred  
12 to as partition fences), in either circumstances. The first  
13 circumstance involves a controversy between the owners that  
14 results in an order being issued by the board of trustees  
15 of the township where the property boundary is located, who  
16 assume the title of fence viewers (Code sections 359A.3 through  
17 359A.11 and Code section 359A.22). The second circumstance  
18 involves a private agreement entered into by the owners which  
19 is recorded in the county where the township is located (Code  
20 sections 359A.12 and 359A.13).

21 BILL'S PROVISIONS — CONFLICTS OF INTEREST. The bill  
22 provides for a fence viewer who has a conflict of interest  
23 involving any question related to the controversy: If the  
24 fence viewer may have a conflict of interest, the fence viewer  
25 must make disclosure of the possible conflict of interest to  
26 the parties and other fence viewers. If the fence viewer  
27 has an actual conflict of interest, the fence viewer must  
28 be disqualified either at the fence viewer's election or by  
29 vote of the other trustees. Either action must be described  
30 in the fence viewers' notice to the parties and order. A  
31 conflict of interest occurs when a fence viewer is asked to  
32 make a determination that would directly affect the personal  
33 or financial interests of the fence viewer or immediate family  
34 member. If the trustee is disqualified, the county's board  
35 of supervisors must appoint a substitute (unless the township

1 clerk selects a fence viewer in cases in which the adjoining  
2 property is located in more than one township). The board  
3 of supervisors may also adopt an ordinance providing for  
4 additional circumstances which create a conflict of interest  
5 and procedures for the disqualification or replacement of a  
6 fence viewer. The bill provides that the fence viewer may  
7 participate in the matter if the parties to the controversy are  
8 notified of the conflict and sign a waiver.

9 BILL'S PROVISIONS — ERECTION OF FENCES BASED ON A  
10 DETERMINATION OF UNFEASIBILITY. The bill provides that the  
11 fence viewers may determine that the erection of a fence on  
12 the property boundary between the adjoining properties is  
13 unfeasible pursuant to a site evaluation conducted by the fence  
14 viewers. The determination may be based on a characteristic  
15 of the land (e.g., land slope), the presence of water (e.g.,  
16 located in a floodplain), some prior right (e.g., an easement),  
17 or a suitable area is unavailable. In that case, the trustees  
18 must assist the parties in reaching an agreement or if that  
19 fails take account of the land's characteristics in the order.  
20 The order shall require the fence be erected at a feasible  
21 location that is closest to the adjoining party's property  
22 boundary.

23 BACKGROUND. The owner of property has a right to erect a  
24 fence on the property boundary between the owner's property  
25 and an adjacent owner (Code section 359A.16). A controversy  
26 requiring participation by a township's fence viewers  
27 may be triggered by an owner demanding that the adjoining  
28 owner or adjoining owners share in the costs of erecting,  
29 maintaining, or repairing the fence. The fence viewers must  
30 provide notice to each adjacent owner that they are parties  
31 to the controversy. The fence viewers act as adjudicators,  
32 by determining the obligations, rights, and duties of the  
33 respective parties, including contributions (payments) which  
34 must be set forth in an order and be assessed and collected as  
35 ordinary taxes (Code section 359A.6). The order is subject

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1 to appeal in district court (Code sections 359A.23 through  
2 359A.25).